IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5940 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAVJIBHAI MOTIRAM PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioners

MR SAMIR DAVE, AGP for Respondent No. 1

DELETED for Respondent No. 2

RULE SERVED for Respondent No. 3

MR KK TRIVEDI for Respondent No. 6,14

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/08/2000

ORAL JUDGEMENT

#. Heard Mr.P.J.Vyas, learned advocate appearing for the petitioners and Mr.Samir Dave, learned AGP for respondent No.1. No one appeared on behalf of the respondent No.2

and Mr.K.K.Trivedi, learned advocate appearing on behalf of the respondent Nos. 6 to 14.

#. In the present petition, RULE has been issued by this Court on 27th July, 1994 and granted ad-interim relief on condition to file undertaking by the petitoner on or before 31st August, 1994. Accordingly, undertaking has been filed by the petitoner on 27th August, 1994 which is on record.

#. The brief facts of the present petition are as under.

The respondent Nos. 2 and 3 are the owners of the land block No. 502 situated in the sim of Olpad admeasuring As.8-33 Gs. [35714 sq. mtrs]. The respondent Nos. 2 and 3 made an application on 8-4-1982 to the respondent no. 4 Taluka Development Officer under Section 65 of th Bombay Land Revenue Code seeking N.A. permissin for residence and industrial purpose. The respondent Nos. 2 & 3 requested to grant N.A. permission for residence from block no. 502 paiki for 8590 sdq.mtrs. and for industrial purpose fom block No. 502 paiki 27124 sq.mtrs. The Taluka Panchayat Executive Committe passed resolution to grant N.A. permission as asked for by respondent Nos. 2 & 3. The Taluka Development Officer, respondent No. 4 herein by order dated 4-5-1982 granted N.A. permission to respondnet Nos.2 and 3 on certain terms and conditions stated in the order. The said lands has been purchased by the petitioners by registered sale deed on 2nd September, 1982 from the respondent nos. 2 and 3. Thereafter, they had also sold the plots to the different persons including respondent Nos. 5 to 14 by sale deeds on different dates. The petitioners also stated that N.A. assessment is being paid by the petitioners. It is also the case of the petitioners that as the lay out plans were approved at the time N.A. permission was granted. The petitioner No.3 had also obtained permission from the group Gram Panchayat, Olpad to put the constructin and the Group Gram Panchayat, Olpad granted permission by its resolution passed on 6th September, 1990. It is also submitted that at the time of filing of the petition, said construction on the land in question upto plinth level on certain plots is made.

#. The District Development Officer, Jilla Panchayat, Surat addressed a letter dated 16th October, 1989 to the Assistant Collector, Olpad Prant to take into suo motu revision the order of the Taluka Development Officer under Section 211 of the Code. Pursuant to the said

letter dated 16th October, 1989 addressed by the District Development Officer to the Assistant Collector, Olpad the Prant Officer issued notice dated 23rd April, 1990 to respondent Nos. 2 and 3 to show cause why N.A. permission be not cancelled mainly on the grounds that before granting N.A. permission, the Taluka Development Office did not obtain opinion regarding conclusion of the land from the Land Acquisiton Officer and since no opinion is obtained from the Deputy Town Planner, the plans approved and N.A. permission order are not forwarded by the registered post, which resulted into breach of condition No.4. But in pursuance of the registered sale deed executed by the respondent Nos. 2 & 3 in favour of the petitioners, names of the petitiones came to be mutated in village form No. 6 and entry also came to be certified by the Revenue authorities. The contention which has been raised by thepetitioners that suo motu power under Section 211 of the Code is exercised after almost 7 years and the Revenue Ofice did not pursue the revenue records and did not issue notice to show cause why N.A. permission granted by the Taluka Development Officer be not cancelled.

#. The Assistant Collector, Olpad Prant, Surat by his order dated 1st October, 1990 cancelled the N.A. pemission granted by the Taluka Development Officer. Against that order, Appeal No. 58 / 1991 filed by the pettioners before the Collector , Surat. The said appeal has been rejected by order dated 20th July, 1991. Thereafter, the revision application has been filed before the Secretary, Revenue Department and by order dated 9th July, 1993, said revision aplication was also rejected by confiring the order dated 1st October, 1990 and being aggrieved by the aforesaid orders dated 9th July, 1993, and the order dated 20th July, 1991, the present petition has been filed by the petitioners.

#. Mr.P.J.Vyas, learned advocate has pointed and raised contention that there is unreasonable delay in issuance of show cause notice. Therefore, according to Mr.Vyas, there is about 7 years delay and that is quite unreasonable delay on the part of the respondent authority. Mr.Vyas also submitted that at present the land is with the respondent Nos. 3 to 14 and that particular land in question has been developed by the respondent Nos. 3 to 14. Mr.Vyas, learned advocate has also contended that though the contention of unreasonable delay was raised before the lower authority and even before the Principal Secretary, Revenue Department, the same had not been dealt with and in support of his contention, my attention has also drawn to certain

decision of this court as well as of the Apex Court, i.e. (1) 10 G.L.R. page 972 (2) 11 G.L.R. page 307 (3) 12 G.L.R. page 668 (4) 25 G.L.T. page 114 and (5) 1984 (2) GLR 1225.

#. In short, the contention of learned advocate Mr.Vyas is that because of unreasonable delay and the fact that during the delay period, the land in question has been developed by the respondent Nos. 3 to 14 and they occupied the land in question and therefore, the orders passed by the authority cancelling the N.A. permission by order dated 1st October, 1990 and subsequent orders passed by the lower appellate authorities are required to be quashed and set aside by this Court.

#. As against this, Mr.Samir Dave, learned AGP appearing on behalf of the respondent authorities has pointed out that in each and every case of delay the order is not necessary to be quashed and set aside. He also submitted that merely delay occurred may not give right to the petitioners to set aside the orders in question but the petitioners have to establish the fact that the land in question has been developed and their livelihood depends upon the land in question and also submitted that there is no such averments in the petition to that effect.

#. Mr.K.K.Trivedi, learned advocate appearing on behalf of the respondent Nos. 3 to 14 has submitted that now the land in question are in possession of the respondent Nos. 3 to 14 and said land has been developed and their livelihood is depend upon their respective land and after lapse of many years, if any action is taken adverse to the respondents, naturally it will affect their livelihood of the respondents concerned. Mr. Trivedi also further contended that the Assistant Collector has no power of suo moto revision under the Act. He relied upon one decision of this Court reported in AIR 1997 Gujarat page 55, wherein the learned Single Judge of this Court has observed as under :-

"A plain perusal of the aforesaid provision would go to show that the Assistant Collector is not competent and not authorised to take the order passed under Section 65 in a suo motu revision under Section 211 of the Code. No doubt Section 211 is a residuary section and the powers thereunder obviously are wide and ample. Otherwise also it is a matter of common understanding that the order of an inferior authority or a lower authority could be taken into revision by the higher authority. Here it

is other way round. The permission under Section 65 of the Code is granted by the Collector in a suo motu revision by the subordinate officer to the Collector namely, Assistant Collector, Vaghoda, respondent No.2 herein. It could never be contended for a moment that the Assistant Collector was competent to take the matter in the suo motu revision. The order under Section 65 of the Code granting N.A. permission came to be passed by the T.D.O. as a delegate of the Collector although the inquiry for the permission is held by the delegate, namely, the TDO to whom the powers of the Collector in this connection are delegated, the order would still remain the order of the Collector. Therefore, it is not the Assistant Collector who is empowered or authorised to take the matter in suo motu revision under Section 211 of the Code. It is the State Government which could take the matter in the suo motu revision against the order of the Collector.

Having regard to the facts and circumstances emerging fro the record of the present case and keeping in mind the relevant proposition of law and the underlying purport and design of the provisions of Sections 65 and 211 of the Code this Court is fully convinced that the impugned order purported to have been recorded by the Assistant Collector, Vaghodia, exercising powers under Section 211 of the Code against the order of TDO, a delegate of the Collector under Section 65 of the Code, is without authority, jurisdiction and is per se illegal with the result this petition is required to be allowed quashing and setting aside the impugned order. "

##. I have heard the learned advocates appearing for the parties. Recently, the view taken by this court in case of SHREE RAVINDARSHAN CO-OP HOUSING SOCIETY LTD CHALTHAN & ORS. V. PRAFULLKUMAR THAKAR, SECRETARY, REVENUE DEPARTMENT & ANR. reported in 2000(2) GLR 1639, wherein the question of unreasonable delay has been considered by the learned Single Judge. The learned Single Judge has considered in the said decision in para 5 and observed that the leading case on limitation for exercise of such power is the case of STATE OF GUJARAT V. RAGHAV NATHA, 1969 (X) GLR 992. The Apex Court in this case observed with to Section 211 of the Code that it is true that there is no period of limitation prescribed under Section

211 of the Bombay Land Revenue Code, but it is plain that this power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and nature of the order. The Apex Court was considering provisions of Section 65 and Section 211 of the Code and in that connection if further observed that Section 65 itself indicates the length of reasonable time within which the Commissioner must act under Section 211. Section 211. Section 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter was so urgent that the permission shall be deemed to have been granted. Reading Section 211 and Section 65 it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. The Commissioner in such matters should also indicate his reasons briefly so that an aggrieved party may carry the matter further if so advised. This period of three months was considered reasonable by the Apex Court because after the grant of permission for building purpose the occupant is likely to spend money on starting building operations at least within a few months from the date of permission. A Division Bench of this Court in HABIB NASHIR KHANJI VS. STATE OF GUJARAT, 1970 (XI) GLR 307 following the verdict of the Apex Court in State of Gujarat V. Patel (Supra) observed that the powers under Section 211 must be exercised within a reasonable time.

##. The Division Bench in another case of Bhagwanji Bawanji V. State of Gujarat 1971 (XII) GLR 156 again took the same view that the power of revision under Section 211 of the Code must be exercised within a reasonable time. In this case, the power under Section 211 of the Code was exercised after seven years and it was held that though no period of limitation is prescribed under Section 211 of the Code, this power of revision must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised. The State Government cannot keep the sword hanging on any such person in respect of his property by choosing to act and revise the order at its sweetwill which may be after seven years, as it was sought to be done in this case. It was further observed that if on the other hand any such order was passed against the appellant by the Commissioner, he would have been obliged to move the State Government for reversal, if permissible under Section 211 of the Code within three months or so at any rate he would have to file a suit within one year under Article 14 of the first Schedule of the Limitation Act and cannot wait till the State Government decides

anything in that matter. In other words, the Legislature has thought it proper to provide for one year as a period within which any party affected by such act or order passed by the Officer of the Government could file a suit and there is no reason why the State Government also could not do so, if it were so affected by any such order such as the order of the Commissioner under Section 211 of the Code. According to the Division Bench of this Court maximum period in such case cannot be more than one year from the date of the Commissioner's order and to say that it can do so after any length of time, namely after seven years cannot be called at all as reasonable.

##. Similarly, in case of RAJUL CO-OP HOUSING SOCIETY LTD. VS. STATE OF GUJARAT 1985 (2) GLR 1187 this Court again held that the revisional power under Section 211 of the Code must be exercised within a reasonable time. In that case, the revisional power was exercised after about five and half years has been considered unreasonable by this Court. Thereafter, in case of EVERGREEN APARTMENT V. SPL. SECRETARY, 1991 (1) GLR 113 again the facts were almost similar and on identical facts this Court held that though no limitation is prescribed under Section 211 of the Code, the revisional power has to be exercised in a reasonable time.

##. In the contention which has been raised by the learned advocate Mr.Vyas that no notice was issued by the Collector at the time of exercise of suo moto revisional power under Section 211 of the Code. No counter affidavit has been filed rebutting the this contention. In the impugned order of the Deputy Collector, there is no mention that any notice was issued by him to the petitioners or occupants of the plots i.e. respondents No. 3 to 14. Even if some suo moto powers were proposed to be exercised by the Collector under Section 211 of the Code, principles of natural justice required that a show cause notice should have been given to the affected persons by the proposed order but in the instant case, persons affected by the order were the petitioners and also the occupants of the plots namely the respondent Nos. 3 to 14. No such notice was given, therefore, the impugned order of the Deputy Collector and the consequent orders of the State Government affirming the order of the Collector has been vitiated because of non observance of principles of natural justice.

##. The petitioners have made averments in the present petition in ground (b) that no notice was issued by the Assistant Collector either to the petitioners or to the respondent Nos. 3 to 14. The petitioners further

contended that the Assistant Collector has not heard petitioners and order of the Assistant Collector was affirmed by the Collector and passed after lapsed of 7 years. The respondent authority has not filed any counter affidavit aginst the present petition.

##. Therefore, considering this submission of learned advocates for the parties and considering the decisions of this Court reported in AIR 1997 Gujarat 55 and 2000 (2) GLR page 1639 and considering the facts of the present case that order of granting permission by the Taluka Development Officer on 4th May, 1982 and issuing notice by the Assistant Collector on 23rd April, 1990 after period of 7 years is unreasonable delay while exercising powers under Section 203 and 211 of the Land Revenue Code,therefore, the order passed by the authority dated 1st October, 1990 and the order passed in Appeal dated 20th July, 1991 and order passed in revision application dated 9th July, 1993 are hereby quashed and set aside and the present petition is allowed. Rule is made absolute with no order as to costs.

Date : 31-8-2000 [H.K.Rathod,J.]

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